



Agenda Date: 6/06/01

Agenda Item: 4E

***STATE OF NEW JERSEY***

***Board of Public Utilities***

*Two Gateway Center*

*Newark, NJ 07102*

**TELECOMMUNICATIONS**

IN THE MATTER OF THE PETITION FOR AN )  
ORDER AUTHORIZING QWEST COMMUNI- )  
CATIONS CORPORATION TO PROVIDE LOCAL )  
EXCHANGE TELECOMMUNICATIONS )  
SERVICE THROUGHOUT THE STATE OF )  
NEW JERSEY )

**ORDER OF APPROVAL**

DOCKET NO. TE98121421

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

By letter dated December 15, 1998, Qwest Communications Corporation (QCC or Petitioner) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange telecommunications service throughout the State of New Jersey. Petitioner submitted responses to a Staff questionnaire as well as to Staff interrogatories by letter dated February 26, 1999, and to additional Staff interrogatories by letters dated April 2, 2001 and April 19, 2001. In addition, the April 2, 2001 letter updated the original questionnaire.

**BACKGROUND**

According to the petition, QCC was organized under the laws of the State of Delaware and its principal offices are located 555 Seventeenth Street, Denver, Colorado 80202. Petition at 1-2. QCC is a subsidiary of Qwest Communications International, Inc., which is a publicly traded company listed on the NASDAQ National Market.

Petitioner submitted copies of the Articles of Incorporation, a Delaware Certificate of Good Standing and a New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 1, Exhibits A and B; April 2, 2001 letter. QCC is currently authorized to provide and is providing resold local exchange services in California, Colorado, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee and Virginia. It is also providing facilities-based local exchange services in California, the District of Columbia, Illinois, Maryland, Missouri, New York and Texas. In addition to local exchange services, it is providing both resold and facilities-based interexchange services in a number of these states. Qwest is currently providing resold interexchange services in New Jersey.

Petitioner requested that the Board grant a waiver of the requirement to maintain its books and records within the State of New Jersey pursuant to N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-5.15 and a waiver to utilize Generally Accepted Accounting Principles (GAAP) in place of the Uniform System of Accounts (USOA) pursuant to N.J.A.C. 14:1-1.2. Petitioner stated that it will keep its books and records at its QCC headquarters in Denver, Colorado because maintaining its books and records in New Jersey would add significant additional cost to its operations and would be unduly burdensome. In addition, Petitioner also stated that it will produce its books and records at such time and place within New Jersey as the Board designates and will bear the cost of reasonable expenses or charges incurred by the Board in investigating or examining QCC's books and records. February 26, 1999 letter, Attachment B. QCC advised that it currently maintains its books and records in accordance with GAAP and that no other jurisdiction requires QCC to keep its books and records in accordance with the USOA. February 26, 1999, letter, Attachment B. QCC stated that maintaining two sets of books would be an extremely onerous requirement, especially since GAAP will accurately reflect QCC's operations. February 26, 1999 letter, Attachment B.

QCC seeks authority to resell services obtained from other local exchange companies and provide facilities-based local and intraLATA telecommunications services to small, medium and large size business customers in the State of New Jersey. As QCC's customer base in New Jersey grows, Petitioner hopes to expand its target market to include residential customers. Petitioner intends to operate as a competitive local exchange carrier offering a variety of dedicated and switched services. Specifically, QCC's services will include plain old telephone services, switched access services, data transmission services and PBX trunking. Petition at 2.

Qwest has opted into the Sprint Communications Company L.P. and Verizon New Jersey interconnection agreement. This agreement was signed by Qwest and Verizon New Jersey on March 19, 1998 and is currently pending before this Board in Docket TO99080635.

With regard to its technical and managerial qualifications, QCC submitted the professional biographies of its directors and executive officers, who, according to QCC, possess the necessary technical and managerial qualifications to operate and manage its proposed telecommunications operations in the State of New Jersey. Petition at 3, Exhibit C.

In support of its financial qualifications, QCC stated that it has adequate access to the capital needed to cover all aspects related to the operations of its New Jersey business and that it will rely upon the financial resources of its parent corporation, Qwest Communications International, Inc. Petition at 3. In support of its parent's financial qualifications, QCC has filed Qwest Communications International, Inc.'s financial statements and SEC Form 10-K. Petition at 3, Exhibit D.

By letter dated January 27, 1999, the Division of Ratepayer Advocate recommended that the Board approve this petition.

At its April 11, 2001 agenda meeting, the Board approved an Administrative Consent Order regarding a settlement by Qwest with the Board and the Division of Consumer Affairs regarding past slamming complaints against Qwest involving their marketing of long distance services in New Jersey. Qwest has committed itself to: 1) monitor agents; 2) impose penalties against agents for violations; 3) verify carrier selection changes through an independent third party; 4) devise and implement a nationwide consumer education campaign; 5) periodically (every six months) reaffirm with its agents policies against fraud; and 6) engage an independent auditor to conduct annual examinations of its antislamming reporting process. The Board is satisfied that

Qwest's changes to its marketing practices will protect future customers of Qwest in New Jersey.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. § 151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the local exchange telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial and management integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed QCC's petition and the information supplied in support thereof, the Board FINDS that QCC has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide local exchange telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES QCC to provide local exchange telecommunications service in New Jersey subject to approval of its tariff and submission of its pro forma financials.

Regarding QCC's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, pursuant to N.J.A.C. 14:1-1.2(b)1, from its requirements for Petitioner to maintain its books and records under the USOA and in New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records when requested, and at its own expense, the Board APPROVES QCC's request for an exemption from maintaining its books and records in New Jersey and under the USOA.

DATED: 6/29/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
CAROL J. MURPHY  
ACTING PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
BOARD SECRETARY